

ORIGINAL

FILED

July 12 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0327

FILED

CHARLES L. CADDELL,

JUL 12 2010

Plaintiff and Appellant,

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

v.

**HELENA ELDERHOUSING, INC., a Montana corporation and
ACCESSIBLE SPACE, INC., a Minnesota corporation,**

Defendants and Appellees.

MOTION TO DISMISS APPEAL

On Appeal from the District Court of the
First Judicial District Court of the State of Montana
in and for the County of Lewis and Clark

APPEARANCES:

CHARLES L. CADDELL
Aspen Village Unit 103
615 Janet Street
Helena, MT 59604
**PRO SE PLAINTIFF AND
APPELLANT**

IAN MCINTOSH
CROWLEY FLECK PLLP
45 Discovery Drive
P.O. Box 10969
Bozeman, MT 59719-0969
Phone: (406) 556-1430
**ATTORNEY FOR DEFENDANTS/
APPELLEES HELENA
ELDERHOUSING, INC. and
ACCESSIBLE SPACE, INC.**

Defendants Helena Elderhousing, Inc. and Accessible Space, Inc., pursuant to Rule 4(5)(a)(i) of the Montana Rules of Appellate Procedure, hereby request that this Court dismiss Appellant's appeal because the Notice of Appeal was not timely filed. As required by Rule 16(1), Mont.R.App.P., *pro se* Appellant has been contacted regarding this motion but the *pro se* Appellant has not indicated whether he objects to this motion.

STATEMENT OF THE ISSUE

Whether Appellant failed to timely file his Notice of Appeal within the time limit proscribed by Rule 4(5)(a)(i) of the Montana Rules of Appellate Procedure.

ARGUMENT

Rule 4(5)(a)(i), M.R.App.P., states that a Notice of Appeal in a civil case "shall be filed with the clerk of the supreme court within thirty days from the date of entry of the judgment or order from which the appeal is taken." Appellant's Notice of Appeal was filed with the Clerk of the Supreme Court on June 30, 2010, more than 30 days from the date of entry of judgment.

Judge Sherlock granted summary judgment to the Defendants on October 20, 2009. (Order on Various Motions; Exhibit A.) On May 12, 2010, the Montana Judicial District Court, Lewis and Clark County, issued an Order of Dismissal with Prejudice. (Exhibit B.) Appellant's Notice of Appeal was not filed within 30 days of May 12, 2010. Thus, Plaintiff's appeal is untimely and it should be dismissed.

RELIEF SOUGHT

Defendants and Appellees request that Plaintiff and Appellant's appeal be dismissed because it was not timely filed.

Dated this 9th day of July, 2010.



Ian McIntosh
Attorney for Appellees Helena
Elderhousing, Inc. and Accessible Space,
Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4)(d), I certify that this motion is printed with 14 point proportionally spaced Times New Roman font and, as counted by Microsoft Word 2007, has fewer than 1,250 words, as required by Mont. R. App. P. 16(3).

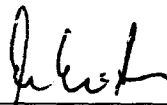


Ian McIntosh

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss, filed by Appellees Helena Elderhousing, Inc. and Accessible Space, Inc., has been mailed by U.S. Postal Service, postage prepaid to the following persons listed below on this 9th day of July, 2010.

CHARLES L. CADDELL
Aspen Village Unit 103
615 Janet Street
Helena, MT 59604



Ian McIntosh